



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB547]

Marine Mammals; File No. 25900

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Echo Pictures Ltd. (Responsible Party: Joe Stevens), St Nicholas House, 31-34 High Street, Bristol, BS1 2AW, United Kingdom has applied in due form for a permit to conduct commercial or educational photography on humpback whales (*Megaptera novaeangliae*).

DATES: Written, telefaxed, or e-mail comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: These documents are available upon written request via email to *NMFS.Pr1Comments@noaa.gov*.

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 25900 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov*. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jordan Rutland or Carrie Hubbard, (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C.

1361 *et seq.*) and the regulations governing the taking of marine mammals (50 CFR part 216).

The applicant proposes to film humpback whales off the coast of Maui, Hawaii to obtain footage for a television series. Up to 1,120 humpback whales may be harassed during filming from vessels, an unmanned aircraft system, and underwater divers. The permit would expire April 30, 2022.

It has come to the agency's attention that the 2016 interim final humpback approach rule (50 CFR 216.19; 81 FR 62010, September 8, 2016) does not explicitly exempt permits issued under section 104(c)(6) of the MMPA from its prohibitions. It is not the agency's intent to preclude the issuance of permits or authorizations consistent with the requirements of the MMPA. We interpret the rule to allow issuance of these permits. Consistent with this interpretation, it has been our practice to continue to issue section 104(c)(6) permits that are in compliance with the Act's requirements and our review procedures, as evidenced by issuance of four such permits since the rule's effective date. However, to eliminate any potential ambiguity, we intend to revise the rule to explicitly clarify that photography permits issued under section 104(c)(6) of the MMPA are exempt from the prohibitions on approach.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 3, 2021.

Julia M. Harrison, *Chief, Permits and Conservation Division,*
Office of Protected Resources,
National Marine Fisheries Service.

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